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Attorneys for Defendant David Harbour

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

United States of America,  
  
Plaintiff,  
  
vs.  
  
David Allen Harbour,  
  
Defendant.

Case No. 2:19-cr-00898-DLR (DMF)

**EMERGENCY MOTION TO  
RELEASE DEFENDANT TO  
ASSIST IN PREPARING FOR AND  
PARTICIPATING IN THE TWO-  
DAY SENTENCING AND  
FORFEITURE HEARINGS**

After months of hearings and *de novo* review, the Court ordered that Defendant could be released on bail with new conditions. The Court went over the new conditions in a hearing on July 19, 2022. *See*, RT 7/19/22. Prior to the trial that commenced on February 1, 2023, the Court re-reviewed the requirement for an additional \$500,000 cash bond to augment the \$500,000 real estate bond (secured by Abby Harbour's parents' home in Fountain Hills). *See* RT 7/19/22 at pp. 5-6. After a hearing, the Court set-aside that new condition. The Court's stated reason was that it determined that Defendant was not a flight risk and, equally as important, if not more important, Defendant needed to be in a position to aid counsel in his own defense. After a few days, Defendant was released.

1 Following the trial, the government demanded an immediate revocation of Mr.  
2 Harbour's release. This was denied twice, first by Judge Humetewa following the verdict  
3 and then several days later after an exchange of papers.  
4

5 On March 3, 2023, the Court stated:

6 Although the detention is presumed under 18 U.S.C. Section 3143(a) and I  
7 found that he's a flight risk, I find that by clear and convincing evidence  
8 that the flight risk has been sufficiently mitigated by the conditions that  
9 have been imposed and have been successfully imposed and he's done very  
10 well. I do not find that he should be placed into custody because of those  
11 reasons. (RT, March 3, 2023)

12 Mr. Harbour remained free until after the entry of a plea of guilty to Count 24 even  
13 though the Court again found that he was not a flight risk. When the Court reversed that  
14 finding after Mr. Harbour pleaded guilty to Count 24, an offense involving \$170,000,  
15 whose cap was 2-years will be a Level 13 offense at most at sentencing, the Court did not  
16 offer a reason for its change of position.

17 On Tuesday, January 18, 2023, we all had experienced a "practice run" as to what  
18 each day in court could be foreseen to entail. Defendant would be turned-out at around  
19 10:30 P.M., would be transported to the Courthouse in the middle of the night, caged with  
20 others in similar position. He would be unable to sleep at all, nor could anyone be  
21 expected to sleep under those conditions. We stated that, in court, he would be  
22 completely sleep-deprived every day. After that in-person appearance, Defendant left the  
23 Courthouse at about 5 P.M. and arrived at Florence at about 8:30 P.M.

24 Unless he is released for the sentencing and forfeiture proceeding, this can be  
25 expected to occur again in the same way. He will essentially be out on his feet for both  
26 days of these critical proceedings. He plans to address the Court, at no small length,  
27  
28

1 arguing for his liberty. After all, through the catastrophic series of government-induced  
2 error (in our opinion), he is going to have to explain 15 years of his life to the Court. It is  
3 not going to be possible for him to do this given the circumstances described above.

4  
5 The draft presentencing report is a single spaced, 37-page document. Double-  
6 spaced, it would be about 70-pages.<sup>1</sup> There may be a lot to discuss over the two-days set-  
7 aside for the proceedings. Trying to accomplish the defense's aims will be impossible  
8 under the circumstances presented. In my professional opinion, there is no chance that  
9 defendant will be able to receive and process the counsel's advice under the conditions  
10 outlined above and, consequently, for defendant to receive a fair sentencing hearing.

11  
12 There were once 5 charged victims whose total losses were: PAIF \$1.1 million,  
13 Burg, \$1,000,000, Alison Willson \$100,000, Carol Hill \$81,000 and Rich Turasky,  
14 \$350,000. The tax case was conceded by the government to be a \$169,000 case. The  
15 alleged mortgage fraud case involved an alleged \$242,000 fraud and that case has been  
16 dropped.

17  
18 The losses in this case, at worst, are \$2,450,000 and, at best, zero, meaning that  
19 Harbour is a Level 7 and has already served more than a guideline sentence. Burg's and  
20 Turasky's losses were not proximately connected to the fraud, even if they were

21  
22  
23 <sup>1</sup> Government counsel apparently thinks that the Presentence Report must be a pleading  
24 governed by LRCiv. 7.2. The government has moved to strike the Objections to the Draft  
25 PSR because the objections are longer than 17-pages. This is, of course, a position with  
26 no support in any Rule. The first clue should have been the Draft PSR is not a pleading at  
27 all, and LRCiv. 7.2 does not apply to it. There are literally no cases to be found wherein a  
28 page-limitation was applicable to objections to the PSR nor, just as importantly, to the  
forthcoming sentencing memo. For example, Elizabeth Holmes first Sentencing  
Memorandum was 84-pages.

1 connected to the “deceit,” meaning the failure to disclose the FTC and State regulatory  
2 investigations. It is incontrovertible that the losses resulted from the superseding and  
3 intervening actions of PAIF in foreclosing the Green Circle Bank account into which  
4 their funds had been deposited. As to PAIF, it suffered no loss at all since when it  
5 foreclosed it took \$2.9 million. Deducting Burg’s and Turasky’s funds (\$1,350,000),  
6 PAIF not only got back the \$1.1 million it had advanced to Green Circle to repay Oak  
7 Tree’s loan to Green Circle, but about \$450,000 in “boot.”  
8

9  
10 The Marshall’s have a schedule they keep and there are no exceptions of which we  
11 are aware that could alter what we all know will occur here. Between the Marshall’s  
12 schedule and the Court’s calendar, there is no opportunity for Harbour to sleep at all.  
13 Harbour cannot get a fair sentencing hearing while in custody and sleep deprived.  
14

15 It is therefore requested that the Court release Mr. Harbour under the same  
16 conditions as he was released before the trial. The sentencing proceeding is less than 3-  
17 weeks away.

18 Harbour was on time for every session of the month-long trial. There are plenty of  
19 adults who are able to look out for his welfare and ensure his arrival in Court for the June  
20 6-7, 2023 hearing. They include his mother-in-law who has placed a \$500,000 property  
21 bond on her house; his mother, who was at trial almost every day, his wife, and his sister  
22 who lives on the West Side.  
23

24  
25 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of May 2023.

26 CHRISTIAN DICHTER & SLUGA, P.C.

27 By: /s/ Stephen M. Dichter

28 Stephen M. Dichter

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2023 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and for transmittal of Notice of Electronic Filing to the following CM/ECF registrants:

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